

§ 3.809a

38 CFR Ch. I (7–1–16 Edition)

(a) *General.* A member of the Armed Forces serving on active duty must have a disability rated as permanent and total that was incurred or aggravated in line of duty in active military, naval, or air service. A veteran must be entitled to compensation under chapter 11 of title 38, United States Code, for a disability rated as permanent and total.

(b) *Disability.* The disability must be due to:

(1) The loss or loss of use of both lower extremities, such as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair,

(2) Blindness in both eyes, having only light perception, plus the anatomical loss or loss of use of one lower extremity,

(3) The loss or loss of use of one lower extremity together with residuals of organic disease or injury which so affect the functions of balance or propulsion as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair,

(4) The loss or loss of use of one lower extremity together with the loss or loss of use of one upper extremity which so affect the functions of balance or propulsion as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair,

(5) The loss or loss of use of both upper extremities such as to preclude use of the arms at or above the elbow, or

(6) Full thickness or subdermal burns that have resulted in contractures with limitation of motion of two or more extremities or of at least one extremity and the trunk.

(c) *Preclude locomotion.* This term means the necessity for regular and constant use of a wheelchair, braces, crutches or canes as a normal mode of locomotion although occasional locomotion by other methods may be possible.

(d) *Amyotrophic lateral sclerosis.* VA considers § 3.809(b) satisfied if the veteran or member of the Armed Forces serving on active duty has service-connected amyotrophic lateral sclerosis rated 100 percent disabling under 38 CFR 4.124a, diagnostic code 8017.

(Authority: 38 U.S.C. 501(a), 1151(c)(1), 2101, 2101A)

Cross Reference: Assistance to certain disabled veterans in acquiring specially adapted housing. See §§ 36.4400 through 36.4410 of this chapter.

[78 FR 72576, Dec. 3, 2013]

§ 3.809a Special home adaptation grants under 38 U.S.C. 2101(b).

A certificate of eligibility for assistance in acquiring necessary special home adaptations, or, on or after October 28, 1986, for assistance in acquiring a residence already adapted with necessary special features, under 38 U.S.C. 2101(b) or 2101A(a) may be issued to a veteran who served after April 20, 1898, or to a member of the Armed Forces serving on active duty who is eligible for the benefit under this section on or after December 16, 2003, if the following requirements are met:

(a) The member of the Armed Forces serving on active duty or veteran is not entitled to a certificate of eligibility for assistance in acquiring specially adapted housing under § 3.809 nor had the member of the Armed Forces serving on active duty or veteran previously received assistance in acquiring specially adapted housing under 38 U.S.C. 2101(a). A member of the Armed Forces serving on active duty or veteran who first establishes entitlement under this section and who later becomes eligible for a certificate of eligibility under § 3.809 may be issued a certificate of eligibility under § 3.809.

(b) A member of the Armed Forces serving on active duty must have a disability that was incurred or aggravated in line of duty in active military, naval, or air service and meets the requirements described in either paragraph (b)(1) or (b)(2) of this section. A veteran must be entitled to compensation under chapter 11 of title 38, United States Code, for a disability that meets the requirements described in either paragraph (b)(1) or (b)(2) of this section.

(1) VA has rated the disability as permanently and totally disabling and it:

(i) Includes the anatomical loss or loss of use of both hands;

(ii) Is due to deep partial thickness burns that have resulted in contracture(s) with limitation of motion of two or more extremities or of at least one extremity and the trunk;

Department of Veterans Affairs

§3.810

(iii) Is due to full thickness or subdermal burns that have resulted in contracture(s) with limitation of motion of one or more extremities or the trunk; or

(iv) Is due to residuals of an inhalation injury (including, but not limited to, pulmonary fibrosis, asthma, and chronic obstructive pulmonary disease).

(2) The disability is due to blindness in both eyes, having central visual acuity of 20/200 or less in the better eye with the use of a standard correcting lens. For the purposes of this paragraph, an eye with a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered as having a central visual acuity of 20/200 or less. The disability discussed in this paragraph need not be rated as permanently and totally disabling.

(Authority: 38 U.S.C. 1151(c)(1), 2101, 2101A, 2104)

CROSS REFERENCE: Assistance to certain disabled veterans in acquiring specially adapted housing. See §§36.4400 through 36.4410 of this chapter.

[46 FR 47543, Sept. 29, 1981, as amended at 53 FR 23237, June 21, 1988; 75 FR 57861, Sept. 23, 2010; 79 FR 54609, Sept. 12, 2014]

§3.810 Clothing allowance.

(a) Except as provided in paragraph (d) of this section, a veteran who has a service-connected disability, or a disability compensable under 38 U.S.C. 1151 as if it were service connected, is entitled, upon application therefore, to an annual clothing allowance, which is payable in a lump sum, as specified in this paragraph.

(1) *One clothing allowance.* A veteran is entitled to one annual clothing allowance if—

(i) A VA examination or a hospital or examination report from a facility specified in §3.326(b) establishes that the veteran, because of a service-connected disability or disabilities due to loss or loss of use of a hand or foot compensable at a rate specified in §3.350(a), (b), (c), (d), or (f), wears or uses one qualifying prosthetic or orthopedic appliance (including, but not lim-

ited to, a wheelchair) which tends to wear or tear clothing; or

(ii) The Under Secretary for Health or a designee certifies that—

(A) A veteran, because of a service-connected disability or disabilities, wears or uses one qualifying prosthetic or orthopedic appliance (including, but not limited to, a wheelchair) which tends to wear or tear clothing; or

(B) A veteran uses medication prescribed by a physician for one skin condition, which is due to a service-connected disability, that causes irreparable damage to the veteran's outer garments.

(2) *More than one clothing allowance; multiple types of garments affected.* A veteran is entitled to an annual clothing allowance for each prosthetic or orthopedic appliance (including, but not limited to, a wheelchair) or medication used by the veteran if each appliance or medication—

(i) Satisfies the requirements of paragraph (a)(1) of this section; and

(ii) Affects a distinct type of article of clothing or outer garment.

(3) *Two clothing allowances; single type of garment affected.* A veteran is entitled to two annual clothing allowances if a veteran uses more than one prosthetic or orthopedic appliance, (including, but not limited to, a wheelchair), medication for more than one skin condition, or an appliance and a medication, and the appliance(s) or medication(s)—

(i) Each satisfy the requirements of paragraph (a)(1) of this section; and

(ii) Together tend to wear or tear a single type of article of clothing or irreparably damage a type of outer garment at an increased rate of damage to the clothing or outer garment due to a second appliance or medication.

(b) Effective August 1, 1972, the initial lump sum clothing allowance is due and payable for veterans meeting the eligibility requirements of paragraph (a) of this section as of that date. Subsequent annual payments for those meeting the eligibility requirements of paragraphs (a) of this section will become due on the anniversary date thereafter, both as to initial claims and recurring payments under previously established entitlement.